

## CHAPTER 2017-143

### Committee Substitute for Committee Substitute for House Bill No. 837

An act relating to insurer insolvency; amending s. 631.015, F.S.; adding the Insurer Receivership Model Act to a list of acts that extend reciprocity in the treatment of policyholders in receivership if such act is enacted in other states; amending s. 631.021, F.S.; adding the Florida Health Maintenance Organization Consumer Assistance Plan to a list of entities that must be given reasonable written notice by the Department of Financial Services of hearings pertaining to certain insurers; revising the exclusive jurisdiction of the Circuit Court of Leon County, upon issuance of specified orders, of an insurer's assets or property in a delinquency proceeding; providing construction; amending s. 631.031, F.S.; requiring an insurer to file its response and defenses to a certain order within a specified timeframe; requiring that a hearing to determine whether cause exists to appoint the department as receiver must be commenced by a specified time; amending s. 631.041, F.S.; providing an exception for the Office of Insurance Regulation from applicability of a certain application or petition operating as an automatic stay; amending s. 631.141, F.S.; authorizing a receiver to assume or reject an insurer's executory contract or unexpired lease; authorizing the department as domiciliary receiver to pay certain expenses or reject certain contracts; providing that, under certain circumstances, certain persons of an insurer that is under liquidation are permanently discharged and have no further authority over the affairs or assets of the insurer; amending s. 631.152, F.S.; conforming a cross-reference; creating s. 631.1521, F.S.; prohibiting certain defenses in actions by and against a receiver; authorizing certain defenses in actions by and against a receiver; specifying that a principal under a surety bond or surety undertaking, under certain circumstances, is entitled to credit for the value of certain property against a reimbursement obligation to the receiver; limiting admissibility of evidence of fraud in the inducement to evidence contained in insurer records; creating s. 631.1522, F.S.; prohibiting, in a receiver's proceeding or claim, the assertion of defenses or claims by an affiliate or certain persons of an insurer except under certain circumstances; providing construction; amending s. 631.181, F.S.; authorizing a receivership court to allow alternative procedures and requirements for filing proofs of claim or allowing or proving claims; providing construction; prohibiting a receivership court from waiving certain filing requirements; providing conditions in which claims will be late-filed; authorizing a receiver to petition the receivership court to set certain deadlines; requiring a receiver to provide notice of filing a certain petition to certain claimants; amending s. 631.191, F.S.; providing definitions; providing applicability; requiring that specified large deductible claims under certain workers' compensation policies must be turned over to the applicable responsible guaranty association for handling; providing for construction relating to payment of

deductible claims; authorizing receivers to collect reimbursements owed for certain deductible claims; providing requirements for such collections; providing for construction relating to such collections; requiring receivers to use collateral, when available, to secure certain obligations; providing that a guaranty association is entitled to collateral for a certain purpose; providing for construction relating to certain distributions; requiring receivers to draw down collateral under certain circumstances; providing a procedure for payment of claims; authorizing the return of excess collateral under certain circumstances; providing that a receiver is entitled to deduct certain expenses from the collateral or deductible reimbursements; providing for construction; amending s. 631.192, F.S.; prohibiting specified claims; amending s. 631.271, F.S.; adding and revising claims to a list that establishes the priority of distribution of claims from an insurer's estate; specifying when interest on claims accrue and the interest rate calculation; amending s. 631.391, F.S.; specifying that certain persons in relation to an insurer who must cooperate with the department or office in certain proceedings or investigations include present or former roles; defining the term "person"; amending s. 631.395, F.S.; requiring an order of liquidation to authorize the release of certain claims files, records, documents, or claims, rather than only copies of the claims files, records, documents, or claims; amending s. 631.397, F.S.; authorizing the department as receiver to apply to the court for approval of a specified proposal, rather than requiring the department to make such application within a specified timeframe; deleting a specified notice requirement of the department; deleting a provision authorizing the court to take action on the application under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 631.015, Florida Statutes, is amended to read:

631.015 Reciprocity; treatment of policyholders.—Reciprocity in the treatment of policyholders in receivership is extended to those states which, in substance and effect, enact the National Association of Insurance Commissioners Rehabilitation and Liquidation Model Act, ~~or the Uniform Insurers Liquidation Act,~~ or the Insurer Receivership Model Act.

Section 2. Section 631.021, Florida Statutes, is amended to read:

631.021 Jurisdiction of delinquency proceeding; venue; change of venue; exclusiveness of remedy; appeal; construction.—

(1) The circuit court shall have original jurisdiction of any delinquency proceeding under this chapter, and any court with jurisdiction is authorized to make all necessary or proper orders to carry out the purposes of this chapter. Any delinquency proceeding in this chapter is in equity.

(2) The venue of a delinquency proceeding or summary proceeding against a domestic, foreign, or alien insurer shall be in the Circuit Court of Leon County.

(3) A delinquency proceeding pursuant to this chapter constitutes the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer. ~~A No court may not shall~~ entertain a petition for the commencement of such a proceeding unless the petition has been filed in the name of the state on the relation of the department. The Florida Insurance Guaranty Association, Incorporated, the Florida Workers' Compensation Insurance Guaranty Association, Incorporated, the Florida Health Maintenance Organization Consumer Assistance Plan, and the Florida Life and Health Guaranty Association, Incorporated, shall be given reasonable written notice by the department of all hearings ~~that~~ which pertain to an adjudication of insolvency of a member insurer.

(4) An appeal shall lie to the District Court of Appeal, First District, from an order granting or refusing rehabilitation, liquidation, or conservation and from every order in a delinquency proceeding having the character of a final order as to the particular portion of the proceeding embraced therein.

(5) No service of process against the department in its capacity as receiver shall be effective unless served upon a person designated by the receiver and filed with the circuit court having jurisdiction over the delinquency proceeding. The designated person shall refuse to accept service if acceptance would violate a stay against legal proceedings involving an insurer that is the subject of delinquency proceedings or would violate any orders of the circuit court governing a delinquency proceeding. The person denied service may petition the circuit court having jurisdiction over the delinquency proceeding for relief from the receiver's refusal to accept service. This subsection shall be strictly construed, and any purported service on the receiver or the department that is not in accordance with this subsection shall be null and void.

(6) The domiciliary court acquiring jurisdiction over persons subject to this chapter may exercise exclusive jurisdiction to the exclusion of all other courts, except as limited by the provisions of this chapter. Upon the issuance of an order of conservation, rehabilitation, or liquidation, the Circuit Court of Leon County has ~~shall have~~ exclusive jurisdiction over all with respect to assets or property of the any insurer, wherever located, including property located outside the territorial limits of the state subject to such proceedings and claims against said insurer's assets or property.

(7) This chapter constitutes this state's insurer receivership laws, and these laws must be construed as consistent with each other. If there is a conflict between this chapter and any other law, this chapter prevails.

Section 3. Subsections (3) and (4) are added to section 631.031, Florida Statutes, to read:

631.031 Initiation and commencement of delinquency proceeding.—

(3) An insurer subject to an order to show cause entered pursuant to this chapter must file its written response to the order, together with any defenses it may have to the department's allegations, no later than 20 days after service of the order to show cause, but no less than 15 days before the date of the hearing set by the order to show cause.

(4) A hearing held pursuant to this chapter to determine whether cause exists for the department to be appointed receiver must be commenced within 60 days after an order directing an insurer to show cause.

Section 4. Subsection (1) of section 631.041, Florida Statutes, is amended to read:

631.041 Automatic stay; relief from stay; injunctions.—

(1) An application or petition under s. 631.031 operates as a matter of law as an automatic stay applicable to all persons and entities, other than the receiver and the office, which shall be permanent and survive the entry of an order of conservation, rehabilitation, or liquidation, and which shall prohibit:

(a) The commencement or continuation of judicial, administrative, or other action or proceeding against the insurer or against its assets or any part thereof;

(b) The enforcement of a judgment against the insurer or an affiliate obtained either before or after the commencement of the delinquency proceeding;

(c) Any act to obtain possession of property of the insurer;

(d) Any act to create, perfect, or enforce a lien against property of the insurer, except that a secured claim as defined in s. 631.011(21) may proceed under s. 631.191 after the order of liquidation is entered;

(e) Any act to collect, assess, or recover a claim against the insurer, except claims as provided for under this chapter; and

(f) The setoff or offset of any debt owing to the insurer, except offsets as provided in s. 631.281.

Section 5. Present subsections (3) through (5) and (6) through (10) of section 631.141, Florida Statutes, are renumbered as subsections (4) through (6) and (8) through (12), respectively, new subsections (3) and (7) are added to that section, and present subsection (8) is amended, to read:

631.141 Conduct of delinquency proceeding; domestic and alien insurers.

(3) The receiver may assume or reject any executory contract or unexpired lease of the insurer.

(7) The department as domiciliary receiver may pay any expenses under contracts, leases, employment agreements, or other arrangements entered into by the insurer before receivership as the department deems necessary for the purposes of this chapter. The department is not required to pay any such expenses that it determines are not necessary and may reject any contract pursuant to subsection (3).

(10)(8) The department as domiciliary receiver may take such action as it deems necessary or appropriate to reform and revitalize the insurer. The department shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are re delegated by the receiver. The receiver shall have full power to direct and manage the affairs of the insurer, to hire and discharge employees, and to deal with the property and business of the insurer. In the event of the liquidation of an insurer domiciled in this state, and notwithstanding any provision of chapter 605, chapter 607, chapter 617, chapter 620, or chapter 621, all officers, directors, and managers of the insurer are permanently discharged and have no further authority of any kind over the affairs or assets of the insurer, except as may be re delegated by the department.

Section 6. Subsection (4) of section 631.152, Florida Statutes, is amended to read:

631.152 Conduct of delinquency proceeding; foreign insurers.—

(4) Paragraph 631.141(9)(b) Section ~~631.141(7)(b)~~ applies to ancillary delinquency proceedings opened for the purpose of obtaining records necessary to adjudicate the covered claims of Florida policyholders.

Section 7. Section 631.1521, Florida Statutes, is created to read:

631.1521 Actions by and against the receiver.—

(1) An allegation by the receiver of improper or fraudulent conduct against any person may not be the basis of a defense by a third party to the enforcement of a contractual obligation owed to the insurer. This section does not bar a third party from the right to raise a defense that the conduct was materially and substantially related to the contractual obligation for which enforcement is sought.

(2) A prior wrongful or negligent action of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may not be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract; and a principal under a surety bond or a surety undertaking is entitled to credit for the value of any property pledged to secure the reimbursement obligation against any reimbursement obligation to the receiver, to the extent that the receiver has possession or control of the

property, or that the insurer or its agents misappropriated such property, which includes, but is not limited to, the comingling of such property. Evidence of fraud in the inducement is admissible only if it is contained in the records of the insurer.

(3) An action or inaction by an insurance regulatory authority may not be asserted as a defense to a claim by the department.

Section 8. Section 631.1522, Florida Statutes, is created to read:

631.1522 Unrecorded obligations and defenses and claims of affiliates.

(1) In any proceeding or claim by the receiver, an affiliate, a controlled or controlling person, or a present or former officer, manager, director, trustee, or shareholder of the insurer may not assert any defense unless:

(a) Evidence of the defense was recorded in the books and records of the insurer at or about the time the events giving rise to the defense occurred; and

(b) If required by statutory accounting practices and procedures, such events were timely reported on the insurer’s official financial statements filed with the office.

(2) An affiliate, a controlled or controlling person, or a present or former officer, manager, director, trustee, or shareholder of the insurer may not assert any claim unless:

(a) The obligations were recorded in the books and records of the insurer at or about the time the obligations were incurred; and

(b) If required by statutory accounting practices and procedures, the obligations were timely reported on the insurer’s official financial statements filed with the office.

(3) This section does not bar claims based on unrecorded or unreported transactions by the receiver against any affiliate, controlled or controlling person, or present or former officer, manager, director, trustee, or shareholder of the insurer.

Section 9. Paragraph (g) is added to subsection (2) of section 631.181, Florida Statutes, subsection (3) is amended, and subsections (4) and (5) are added to that section, to read:

631.181 Filing and proof of claim.—

(2)

(g) Upon application of the receiver:

1. The receivership court may allow alternative procedures and requirements for the filing of proofs of claim or for allowing or proving claims.

2. If the receivership court waives the requirements of filing a proof of claim for a person, class, or group of persons, a timely proof of claim by such person, class, or group is deemed to be filed for all purposes. However, the receivership court may not waive guaranty association or coverage determination proof of claim filing requirements, to the extent that the guaranty fund statute or filing requirements are inconsistent with the receivership court's waiver of proof.

(3) After the entry of the order of liquidation against a Florida-domiciled insurer, regardless of any prior notice that may have been given to creditors, the receiver shall notify all persons who may have claims against the insurer that they must file such claims with it at a place and within the time specified in the notice, or else such claims will be late-filed forever-barred. The Florida receiver need not give such notice in ancillary proceedings if the receiver obtains an order from the court authorizing the receiver to not send out such notices, which order the court shall issue upon satisfactory evidence that the domiciliary receiver will be sending out similar notices and will accept and evaluate claims from Florida residents, that Florida residents may have objections to evaluations heard in Florida, and that there are reasonable assurances that Florida policyholders and claimants will be treated fairly and equally as compared to residents of the domicile state. The time specified in the notice shall be as fixed by the court for filing of claims and shall be not less than 6 months after the entry of the order of insolvency. The notice shall be given in such manner and for such reasonable period of time as may be ordered by the court.

(4) The receiver may petition the receivership court to set a date certain before which all contingent or unliquidated claims are final. In addition to the notice requirements in this section, the receiver shall give notice of filing the petition to all claimants with claims that remain contingent or unliquidated under this section.

(5) Notwithstanding any other provision of this chapter, the receiver may petition the receivership court to set a date certain after which no further claims may be filed.

Section 10. Section 631.191, Florida Statutes, is amended to read:

631.191 Special deposit claims; and secured claims; administration of workers' compensation large deductible policies and insured collateral.—

(1) SPECIAL DEPOSIT CLAIMS.—The owners of special deposit claims against an insurer against which a liquidation order has been entered in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective

special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(2) SECURED CLAIMS.—

(a) The owner of a secured claim against an insurer against which a liquidation order has been entered in this or any other state may surrender her or his security and file her or his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in a proceeding in which the domiciliary receiver has had notice and an opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

(b) The value of any security held by a secured creditor shall be determined under supervision of the court by:

1. Converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditor; or

2. If no such agreement exists, the court shall determine the value in the event the creditor and the receiver cannot agree upon same.

(3) ADMINISTRATION OF WORKERS' COMPENSATION LARGE DEDUCTIBLE POLICIES AND INSURED COLLATERAL.—

(a) Definitions.—As used in this subsection, the term:

1. “Collateral” means cash, a letter of credit, a surety bond, or any other form of security posted by the insured, or by a captive insurer or reinsurer, to secure the insured’s obligation under a large deductible policy to pay deductible claims or to reimburse the insurer for deductible claim payments. Collateral may also secure an insured’s obligation to reimburse or pay the insurer as may be required for other secured obligations.

2. “Deductible claim” means any claim that is within the deductible under a large deductible policy, including a claim for loss and defense and cost containment expense, unless such expense is excluded by the terms of the policy.

3.a. “Large deductible policy” means a combination of one or more workers’ compensation policies and endorsements issued to an insured, and contracts or security agreements entered into between an insured and the insurer, in which the insured has agreed with the insurer to:

(I) Pay directly the initial portion of any claim under the policy up to a specified dollar amount or the expenses related to any claim; or



(II) Reimburse the insurer for its payment of any claim or related expenses under the policy up to the specified dollar amount of the deductible.

b. The term also includes policies that contain an aggregate limit on the insured's liability for all deductible claims in addition to a per-claim deductible limit. A policy must meet the current guidelines for large deductible workers' compensation filings as defined by the office, including the eligibility standards regarding the minimum standard premium and the minimum deductible to be deemed a large deductible policy.

c. The term does not include policies, endorsements, or agreements providing that the initial portion of any covered claim must be self-insured and that the insurer has no payment obligation within the self-insured retention.

d. The term does not include policies that provide for retrospectively rated premium payments by the insured or reinsurance arrangements or agreements, except to the extent such arrangements or agreements assume, secure, or pay the policyholder's large deductible obligations.

4. "Other secured obligations" means obligations of an insured to an insurer other than those under a large deductible policy, such as those under a reinsurance agreement or other agreement involving retrospective premium obligations, the performance of which is secured by collateral that also secures an insured's obligations under a large deductible policy.

(b) *Applicability.*—

1. This subsection applies to workers' compensation large deductible policies issued by an insurer that is subject to delinquency proceedings under this chapter. This subsection does not apply to first-party claims, or to covered claims funded by a guaranty association above the deductible unless paragraph (c) applies. Large deductible policies must be administered in accordance with the terms of the policy, except to the extent such terms conflict with this subsection.

2. This subsection applies to all delinquency proceedings that commence on or after July 1, 2017.

(c) *Handling of large deductible claims.*—Unless otherwise agreed to by the responsible guaranty association, all large deductible claims that are also covered claims as defined by an applicable guaranty association law, including those that may have been funded by an insured before liquidation, must be turned over to the guaranty association for handling. To the extent the insured funds or pays the deductible claim pursuant to an agreement by the guaranty fund or otherwise, the insured's funding or payment of a deductible claim extinguishes the obligations, if any, of the receiver and any guaranty association to pay such claim. A charge may not be made against the receiver or a guaranty association on the basis of an insured's funding or payment of a deductible claim.

(d) Deductible claims paid by a guaranty association.—

1. To the extent a guaranty association pays any deductible claim for which an insurer would have been entitled to reimbursement from an insured, a guaranty association is entitled to the amount of reimbursements received or collateral available, subject to paragraph (g). Reimbursements paid to the guaranty association pursuant to this paragraph may not be treated as distributions under s. 631.271 or as early access payments under s. 631.397(1).

2. To the extent that a guaranty association pays a deductible claim that is not reimbursed from collateral or by insured payments, or the guaranty association incurred expenses in connection with large deductible policies that are not reimbursed under this subsection, the guaranty association is entitled to assert a claim for those amounts in the delinquency proceeding.

3. This paragraph does not limit any right of the receiver or a guaranty association which may otherwise exist under applicable law to obtain reimbursement from insureds for claims payments made by the guaranty association under policies of the insurer or for the guaranty association's related expenses.

(e) Collections.—

1. The receiver may collect reimbursements owed for deductible claims as provided in this paragraph, and must use reasonable efforts to collect such reimbursements from the insured or the party that is obligated to pay the deductible as specified in the large deductible policy or other agreement. The receiver may bill insureds and others for reimbursement of deductible claims that are:

a. Paid by the insurer before the commencement of delinquency proceedings;

b. Paid by a guaranty association upon receipt by the receiver of notice from a guaranty association of reimbursable payments; or

c. Paid or allowed by the receiver.

2. If the insured or other party does not make payment within the time specified in the large deductible policy, or, if no time is specified, within a reasonable time after the date of billing, the receiver may take reasonable steps to collect any reimbursements owed.

3. The insolvency of the insurer or its inability to perform any of its obligations under the large deductible policy may not be a defense to the insured's reimbursement obligation under the large deductible policy.

4. An allegation of improper handling or payment of a deductible claim by the receiver or a guaranty association may not be a defense to the insured's reimbursement obligations under the large deductible policy.

(f) Collateral.—

1. Subject to this paragraph, the receiver shall use collateral, when available, to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or payment obligations. A guaranty association is entitled to collateral as provided for in this paragraph to the extent needed to reimburse a guaranty association for the payment of a deductible claim. Any distributions made to a guaranty association pursuant to this paragraph may not be treated as distributions under s. 631.271 or as early access payments under s. 631.397(1).

2. The receiver shall draw down collateral to the extent necessary in the event the insured fails to:

a. Perform its funding or payment obligations under any large deductible policy;

b. Pay deductible claim reimbursements within the time specified in the large deductible policy, or, if no time is specified, within 60 days after the date of the billing;

c. Pay amounts due to the estate for preliquidation obligations;

d. Timely fund any other secured obligation; or

e. Timely pay expenses.

3. Claims that are validly asserted against the collateral must be satisfied in the order in which such claims are received by the receiver. However, if more than one creditor has a valid claim against the same collateral and the available collateral, along with billing collection efforts and to the extent that the collateral is subject to other known secured obligations, are together insufficient to pay each creditor in full, the receiver may prorate payments based on the ratio of the amount of claims each creditor has to the total claims paid by all such creditors.

4. Excess collateral may be returned to the insured, as determined by the receiver, after a periodic review of claims paid, outstanding case reserves, and a factor for claims that were incurred but not reported.

(g) Receiver's expenses.—The receiver is entitled to deduct from the collateral or from the deductible reimbursements reasonable and actual expenses incurred in connection with the collection of the collateral and deductible reimbursements as provided pursuant to s. 631.271.

(h) Construction.—This subsection does not limit or adversely affect any rights or powers a guaranty association may have under applicable state law to obtain reimbursement from certain classes of policyholders for claims payments made by the guaranty association under policies of the insolvent insurer, or for related expenses the guaranty association incurs.

Section 11. Subsections (5) is added to section 631.192, Florida Statutes, to read:

631.192 Allowance of certain claims.—

(5) A claim may not be allowed for postjudgment interest accrued after the date the court enters the order of liquidation.

Section 12. Paragraphs (a), (b), and (j) of subsection (1) of section 631.271, Florida Statutes, are amended to read:

631.271 Priority of claims.—

(1) The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this subsection. Every claim in each class shall be paid in full or adequate funds shall be retained for such payment before the members of the next class may receive any payment. No subclasses may be established within any class. The order of distribution of claims shall be:

(a) Class 1.—

1. All of the receiver's costs and expenses of administration.
2. All of the expenses of a guaranty association or foreign guaranty association in handling claims.
3. All of the deputy supervisor's costs and expenses of administration incurred as a result of administrative supervision under part VI of chapter 624.

(b) Class 2.—All claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which claims are not under policies, ~~and~~ all claims of a guaranty association or foreign guaranty association, and all claims related to a patient's healthcare coverage by physicians, hospitals, and other providers of a health insurer or health maintenance organization. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, may not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to her or his employee may be treated as a gratuity.

(j) Class 10.—Interest on allowed claims of Classes 1 through 9. The rate of interest payable on an allowed claim must accrue from the date the court enters the order of liquidation until such time as the receivership court approves the distribution. The interest rate must be calculated in accordance

~~with s. 55.03, according to the terms of a plan to pay interest on allowed claims proposed by the liquidator and approved by the receivership court.~~

Section 13. Section 631.391, Florida Statutes, is amended to read:

631.391 Cooperation of officers and employees.—

(1) Any present or former officer, director, manager, trustee, agent, adjuster, employee, or independent contractor of any insurer or affiliate and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of the insurer or affiliate shall fully cooperate with the department and office in any proceeding under this chapter or any investigation preliminary or incidental to the proceeding. An order of rehabilitation or liquidation which results in the discharge or suspension of any of the persons listed above does not operate to release such person from the duty to cooperate with the department and office as set out herein. As used in this section, the term “person” includes any person who directly or indirectly exercises control over activities of the insurer through any holding company or other affiliate of the insurer. The term “cooperate” includes, but is not limited to, the following:

(a) To reply promptly in writing to any inquiry from the department or office requesting such a reply;

(b) Promptly to make available and deliver to the department or office any books, accounts, documents, other records, information, data processing software, or property of or pertaining to the insurer and in her or his possession, custody, or control; or

(c) Promptly to provide access to all data processing records in hard copy and in electronic form and to data processing facilities and services.

(2) No person shall obstruct or interfere with the department or office in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) This section does not prohibit any person from seeking legal relief from a court when aggrieved by the petition for liquidation or other delinquency proceeding or by other orders.

(4) Any person referred to in subsection (1) who fails to cooperate with the department or office, or any other person who obstructs or interferes with the department or office, in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by fine of not more than \$10,000.

(5) Refusal by any person referred to in subsection (1) to provide records upon the request of the department or office is grounds for revocation of any

insurance-related license, including, but not limited to, agent and third-party administrator licenses.

(6) Any person referred to in subsection (1) who refuses to cooperate in providing records upon the request of the department or office is liable for any penalties, fines, or other costs assessed against the guaranty association or the receiver that result from the refusal or delay to provide records.

Section 14. Section 631.395, Florida Statutes, is amended to read:

631.395 Guaranty fund; orders of court.—Any order of liquidation issued pursuant to s. 631.111 or s. 631.131 must shall authorize and direct the department as receiver to coordinate the operation of the receivership with the operation of any insurance guaranty fund authorized to operate in this state and may authorize the department to provide data processing services for any appropriate guaranty fund. Such authorization must shall include, but not be limited to, release of copies of any of the following:

(1) Claims files, records, or documents pertaining to claims on file with the insolvent insurer; and

(2) Insurance claims filed with the receiver.

Section 15. Subsections (1), (4), and (5) of section 631.397, Florida Statutes, are amended to read:

631.397 Use of certain marshaled assets.—

(1) ~~Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, The department, as receiver, may shall apply to the court for approval of a proposal to disburse assets out of such insurer's marshaled assets, as such assets become available, to each association entitled thereto or, if there are no assets available for such disbursement, then for approval of such proposal as the receiver deems appropriate. For the purposes of this section, the term "association" includes the Florida Insurance Guaranty Association, Incorporated, the Florida Workers' Compensation Insurance Guaranty Association, and any entity or person performing a function in another state similar to that performed in this state by the Florida Insurance Guaranty Association, Incorporated, or the Florida Workers' Compensation Insurance Guaranty Association, provided the Florida Insurance Guaranty Association, Incorporated, or the Florida Workers' Compensation Insurance Guaranty Association, is entitled to like payment under the laws of the association's state of domicile in respect to insolvent companies doing business in that state.~~

~~(4) Notice of such application shall be given by the department to the associations in, and to the commissioners of insurance of, each of the states to which disbursement may be made. Such notice shall be made by certified mail, first-class postage prepaid, at least 15 days prior to submission of such~~

~~application to the court. Such notice shall be deemed to have been made when deposited in the mail.~~

~~(5) Action on the application may be taken by the court if notice has been given pursuant to subsection (4) and the department's proposal complies with subsection (2).~~

Section 16. This act shall take effect July 1, 2017.

Approved by the Governor June 23, 2017.

Filed in Office Secretary of State June 23, 2017.